Texas courts have said that the rule has been changed by statute in that state. See *Smith* v. *State*, 48 Tex. App. 233, 89 S. W. 817, 821; TEXAS PENAL CODE, 1895, §§ 36, 76, 86, 87, 958. But even at common law it is submitted that the principal case is correct. It cannot, it is true, be supported by the rule of evidence that the acts and declarations of one conspirator in furtherance of the common purpose are admissible against any other conspirator. See WIGMORE, EVIDENCE, § 1079; WHARTON, EVIDENCE, § 1205. This rule, however, does not depend on any notion peculiar to conspiracy, but on the fundamental conception that so far as a defendant's liability under the substantive law may be affected by the acts and declarations of another, those acts and declarations are admissible. See *United States* v. *Gooding*, 12 Wheat. (U. S.) 460, 469; *State* v. *Moeller*, 20 N. Dak. 114, 120, 126 N. W. 568, 571. See WIGMORE, EVIDENCE, § 1077. The relationship of principal and accessory, joint principals, or principal and agent between the defendant and his wife may entail such liability. *State* v. *Vertrees*, 33 Nev. 509, 112 Pac. 42; *State* v. *Dickerhoff*, 127 Ia. 404, 103 N. W. 350. See *Jones* v. *Monson*, 137 Wis. 478, 484, 119 N. W. 179, 182; *Price* v. *Price*, 91 Ia. 693, 696, 60 N. W. 202, 205; BISHOP, CRIMINAL LAW, § 631. There was evidence in the principal case to justify a jury finding that one of these relationships existed and that the declarations admitted were made in furtherance of the purpose for which it existed. But at common law one spouse may not testify against the other and this rule extends to declarations proved by third persons. See *Ray* v. *State*, 43 Tex. Cr. R. 234, 236, 64 S. W. 1057, 1058; WIGMORE, EVIDENCE, § 2232. But the rule does not apply in civil suits when there is an agency between the spouses. See WIGMORE, EVIDENCE, § 2232. There is no reason to distinguish criminal from civil cases in applying rules of evidence. See *United States* v. *Gooding*, *supra*. It is submitted, therefore, that where in a criminal case a relationship exists between the spouses that is fundamentally one of agency, the acts and declarations of one may be used against the other.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — SURETY'S LIABILITY TO ASSIGNEE OF ADMINISTRATOR. — An administrator was entitled to a share of the estate. He assigned this interest, and later committed a *devastavit*. The assignee now sues the surety on the administration bond. *Held*, that he may recover. *Muller* v. *National Surety Co.*, 154 N. Y. Supp. 1096.

An assignee is not subject to cross claims which arise between the assignor and the obligor after the assignment. But an exceptional doctrine is applied where a trustee who is also a *cestui* assigns his beneficial interest, or an executor and trustee who is given a legacy assigns that legacy. It is then held, on the ground that the executor is only intended to get a deferred interest, that the assigned share must bear in full the loss even from a *devastavit* committed after the assignment. *Morris* v. *Livie*, 1 Y. & C. Ch. 380; *Doering* v. *Doering*, 42 Ch. Div. 203; *Hart's Estate*, 203 Pa. St. 503, 53 Atl. 373. The fact that there is no trust in the principal case offers no ground for distinction. But it is submitted that the rule is only for the protection of the other *cestuis* or legatees, and that there is no reason to treat the assignable interest as deferred to cross claims of the surety. Thus, though the administrator cannot recover in his capacity as legatee, for he is liable to a counterclaim for indemnification on the bond, the right of the assignee is unimpaired. Indeed, it seems that the administrator himself may recover for the benefit of the estate. See *Wolfinger* v. *Forsman*, 6 Pa. St. 294, 295.

INDICTMENT AND INFORMATION — CONSTITUTIONALITY OF STATUTE DISPENSING WITH GRAND JURY ON PLEA OF GUILTY. — On prosecution for breaking and entering, and larceny, the prisoner filed a plea of guilty, under a statute dispensing with the necessity of indictment by grand jury in such

case, and was at once sentenced. The state constitution provided that "no person shall, for any indictable offense, be proceeded against criminally by information," with certain exceptions. *Held*, that the relator was properly sentenced. *Commonwealth ex rel. Stanton* v. *Francies*, 95 Atl. 527 (Pa.).

For a discussion of this case, see NOTES, p. 326.

INDICTMENT AND INFORMATION — JOINDER OF DEFENDANTS — JOINT INDICTMENT FOR PRACTISING MEDICINE WITHOUT A LICENSE. — Two defendants were indicted jointly for "assuming the duties of a physician, and . . . treating persons afflicted with disease . . . without first having obtained from the state" the certificate required by Section 2580, Code of Iowa. *Held*, that the indictment was good. *State* v. *McAninch*, 154 N. W. 399 (Ia.).

The traditional view has been that there can be no joint indictment for a crime which from its nature cannot be jointly committed. WHARTON, CRIMINAL PLEADING AND PRACTICE, 8 ed., § 302. Thus it was held there could be no joint indictment for exercising a trade without apprenticeship. *Rex* v. *Wesion*, 1 Strange 623. Nor for perjury. 2 Strange 920. Early American cases accepted this notion without analysis. *Vaughn* v. *State*, 4 Mo. 530; *United States* v. *Kazinski*, 26 Fed. Cas. 682. And it persists in some jurisdictions. *Walker* v. *Commonwealth*, 172 S. W. (Ky.) 109; *State* v. *Wilson*, 115 Tenn. 725, 91 S. W. 195. It has even been held that two persons cannot be jointly drunk. *State* v. *Deaton*, 92 N. C. 788. The rule seems to have been purely formal, however, for the mere insertion of the word "separaliter" rendered a joint indictment for a crime of this nature valid. 1 STARKIE, CRIMINAL PLEADING, 43. This being so, it is a short step to hold that the word "several" can be implied where from the nature of the act the crime is several. See *State* v. *Mills*, 39 N. J. L. 587, 588. It is now recognized that the test should be practical, rather than analytical, turning on substantial fairness to the parties rather than the nature of the crime. *State* v. *Winstandley*, 151 Ind. 316, 51 N. E. 92. *Cf. Rex* v. *Philips*, 2 Strange 920. In the principal case a joint indictment can work no hardship, as the court may nevertheless order separate trials, if justice or convenience requires. MCLAIN'S ANN. CODE OF IOWA, § 5375.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — STANDARD MORTGAGE CLAUSE AS PROTECTION AGAINST OWNER'S ACTS. — A mortgagee of certain property sued on the owner's policy. The policy contained standard clauses making the loss, if any, payable to the mortgagee as his interest might appear and stipulating that the conditions contained therein should apply to the mortgagees in the manner written on, attached, or appended thereto. No conditions were appended to the mortgagee clause. The insurance company set up the defense that the owner had burned the property. *Held*, that in the absence of appended conditions the mortgagee's right was unaffected by the owner's acts. *Stamey* v. *Royal Exchange Assur. Co.*, 150 Pac. 227 (Kan.).

Courts generally regard the above mentioned clauses as constituting, between the insurer and the mortgagee, a separate contract whereby the former agrees to pay the latter irrespective of invalidating acts by the owner. *Queen Ins. Co.* v. *Dearborn Savings etc. Ass'n*, 175 Ill. 115, 51 N. E. 717; *Oakland Home Fire Ins. Co.* v. *Bank of Commerce etc.*, 47 Neb. 717, 66 N. W. 646; *Christensen* v. *Fidelity Ins. Co.*, 117 Ia. 77, 90 N. W. 495. Reasons for this bi-contractual theory are not forthcoming, except that it is a method of reaching a desired result. See *Hartford Fire Ins. Co.* v. *Olcott*, 97 Ill. 439. Though it is arguable, it does not seem desirable to stretch the mere agreement by the owner to insure for the mortgagee's benefit into a delegation of power to the former to enter a contract in the latter's behalf. This speculation aside, the